



**In re Estate of Barchok arap Koskei alias Barchok A Koske alias Barchok arap Kosgei Deceased
(Succession Cause 236 of 2015) [2024] KEHC 13737 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13737 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 236 OF 2015**

JK SERGON, J

NOVEMBER 7, 2024

**IN THE MATTER OF THE ESTATE OF BARCHOK ARAP KOSKEI ALIAS
BARCHOK A. KOSKE ALIAS BARCHOK ARAP KOSGEI DECEASED**

BETWEEN

JULIANA CHEBET BOIYWO 1ST APPLICANT

HELLEN CHELANGAT SIGEI 2ND APPLICANT

AND

LUDIA CHEPKIRUI KOSKE 1ST PETITIONER

ANNA CHERONO 2ND PETITIONER

JOHNSTONE KIPCHIRCHIR ARAP SIGEI 3RD PETITIONER

RULING

1. The application coming up for determination is a an amended summons for revocation of grant dated 24th June, 2024 seeking the following orders;
 - (i) Spent
 - (ii) Spent
 - (iii) That this honourable court be pleased to revoke the certificate of grant of letters of administration which was confirmed on 12th October, 2016 in the cause herein.
 - (iv) That costs of this application be awarded to the Applicants/Protestors.
2. The application is supported by grounds on the face of it and the supporting affidavit of Hellen Chelangat Sigei the 2nd applicant herein.



3. The applicant avers that the letters of administration were issued to the petitioners on 17th September, 2015 without their consent, signature forged and the certificate of grant of letters of administration which was confirmed on 12th October, 2016.
4. The applicant avers that the petitioners did not include some of the beneficiaries of the deceased from the succession process and the deceased's properties ought to be shared justly and fairly among the beneficiaries of the deceased.
5. The applicant avers that the respondents have already obtained a certificate of grant and are on the verge of commencing the transmission process.
6. The applicant avers that she does not agree with the mode of distribution of the estate of the deceased and the fact that the respondents were holding it in trust, yet they are all above the age of eighteen and therefore are desirous of having a share of the estate and the titles to the said properties.
7. The applicant avers that the certificate of grant made on 12th October, 2016 should be revoked to pave way for the beneficiaries to agree on a suitable mode of distribution.
8. Anna Cheronu the 2nd petitioner/respondent filed a replying affidavit in response to the application.
9. The respondent avers that all beneficiaries were involved in the instant succession proceedings and therefore the allegation that the applicants were excluded is false as they signed the consent leading to the grant of letters of administration intestate at the onset of the succession proceedings.
10. The respondent avers that the estate of the deceased was equally distributed as per the certificate of confirmation of grant which was confirmed in open court in the presence of all the beneficiaries.
11. The respondent avers that the applicant has not set out grounds warranting the revocation of the grant.
12. The court directed the parties to file their submissions, at the time of writing this ruling, the applicant/protestors had complied and filed their written submissions on the Case Tracking System.
13. The applicant/protestors contended that they were not notified of the proceedings nor was their consent sought and obtained in the process of obtaining and confirmation of the grant, therefore the succession proceedings were defective in nature thereby warranting revocation of the grant. They cited the case of Samuel Wafula Wasike n Hudson Simiyu Wafula [*CA No. 161 of 1993*](#) where the Court of Appeal stated as follows; "A grant obtained on the strength of false claims, without obtaining the consent of persons who had prior right to the grant and on the basis of facts concealed from the court, is liable to revocation."
14. The applicant/protestors contended that they were not privy to the process of the making and consenting to the mode of distribution of the estate of the deceased and the decision to have the properties of the deceased held in trust yet all the beneficiaries of the estate had attained the age of majority. They cited the case of In re Estate of Michael George Tendwa Said (Deceased) [2020] eKLR where the Learned Judge held that section 40 of the [*Law of Succession Act*](#) is applicable where there is no agreement on the distribution of the estate. The Learned Judge stated as follows; "any proposed mode of distribution ought to be compatible with and in accordance with the provision thereby leaving no room for distribution based on the whim of the holder of grant or his /her sentimental feelings."
15. The applicant/protestors contended that upon the failure of parties to agree on the mode of distribution, the estate of the deceased ought to have been distributed equally taking into account the applicant/protestors desire to have a share of both parcels of land namely Bomet/Chebunyo/70 and Kericho/Chesinende/250. The applicant reiterated that pursuant to section 76 (b) of the [*Law of*](#)



Succession Act, the grant of letters of administration and certificate of grant dated 12 October, 2016 ought to be revoked.

16. I have considered the pleadings and submissions by the parties and find that the sole issue for determination by this court is whether to revoke the certificate of grant.
17. On the issue as to whether to revoke the certificate of grant, this Court having considered the application, the responses and submissions by parties finds that this application does not meet the threshold for revocation or annulment of grant as set out in section 76 of the Law of Succession Act.
18. It is clear that the bone of contention on the part of the applicant/protestors is on the mode of distribution of the estate of the deceased and the fact that the respondents were holding it in trust, yet all the beneficiaries had attained the age of majority and were therefore desirous of having a share of the estate and the titles to the said properties.
19. The respondents on their part deponed that all the beneficiaries were involved in the instant succession proceedings and that the estate of the deceased was equally distributed as per the certificate of confirmation of grant which was confirmed in open court in the presence of all the beneficiaries.
20. The applicants/protestors herein have a duty to prove that the grounds set out in section 76 of the Law of Succession Act are adhered to before the grant issued is revoked.
21. In the case of Albert Imbuga Kisigwa vs. Recho Kawai Kisigwa, Succession Cause No.158 of 2000 Mwita. J in his decision noted that; “Power to revoke a grant is discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of the beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interests of justice.”
22. In the end, the summons dated 24th June, 2024 is found to have no merit. The same is ordered dismissed with each party bearing his or her own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 7TH DAY OF NOVEMBER, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Mutai for 1st & 2nd Respondent

Chepngetich for the Protestors

Ngetich for the 3rd Petitioner

